

REMARKS

Reconsideration of the pending application is respectfully requested on the basis of the following particulars.

1. Interview summary

The applicants are appreciative of the opportunity to discuss the pending application with Examiner Robinson and SPE Bianco on September 16, 2009. During the interview, the subject matter of the pending claims and U.S. patent 6,106,492 (*Darcey*), U.S. patent 5,755,678 (*Parker*) and U.S. patent 6,362,388 (*Lucas*) were discussed.

A sample splint in accordance with the pending claims was demonstrated to Examiner Robinson and SPE Bianco during the interview. Particularly, it was shown how the primary tacking arrangement is merely a temporary strap that holds the orthopedic blank to enable single-person application of a secondary more supportive securing means. It was shown that the primary tacking arrangement is extremely lightweight and stretchable. It was also shown that the primary tacking arrangement gradually tears over relatively small loads before completely separating.

Applicant's representative noted that the illustrated strength, stretch and tear properties enable the primary tacking arrangement to be durable and strong enough to temporarily hold the orthopedic blank, yet delicate enough such that the primary tacking arrangement does not create pressure points or restrict circulation.

Applicant's representative pointed out that none of the cited references discloses a primary tacking arrangement "of insufficient strength to rigidly immobilize the splint for long-term use," as recited in independent claims 6, 25 and 40, and further that there is no suggestion, motivation or other rationale to modify any of the straps in the cited references to be "of insufficient strength to rigidly immobilize a splint for long-term use."

It was also noted that the straps 26 in *Darcey* are disclosed as being capable of securing the splint 14 without the aid of the bandage 34. In other words, the straps 26 can be the sole securing means for holding the splint 14. It was further noted that *Darcey* explicitly discloses that the straps 26 are made of a woven or knitted material and that modifying these straps to have the non-woven material of the bandage in *Lucas* would render the straps 26 of *Darcey* unsatisfactory for their intended purpose.

Examiner Robinson and SPE Bianco agreed that the currently applied combination of references does not teach a primary tacking arrangement "of insufficient strength to rigidly immobilize a splint for long-term use," as recited in independent claims 6, 25 and 40. Examiner Robinson and SPE Bianco further indicated that the rejection in view of *Darcey*, *Parker*, *Ferguson* and *Lucas* would be withdrawn upon the formal filing of a request for reconsideration indicating the distinguishing features of pending independent claims 6, 25 and 40 as discussed during the interview.

2. Information Disclosure Statement

An information disclosure statement is concurrently filed herewith along with an accompanying form PTO/SB/08A. Applicant respectfully requests that an initialed version of the form PTO/SB/08A, indicating those documents considered by the Examiner, be mailed with the next Office action.

3. Rejection of claims 6, 9, 14, 15, 18, 20-22, 25-27, 29, 40-42, 44, and 46-50 under 35 U.S.C. § 103(a) as being unpatentable over U.S. patent 6,106,492 (*Darcey*) in view of U.S. patent 5,755,678 (*Parker*), U.S. patent 6,042,557 (*Ferguson*), and U.S. patent 6,362,388 (*Lucas*)

Reconsideration of this rejection is respectfully requested in view of the following remarks which demonstrate that the proposed combination of *Darcey*, *Parker*, *Ferguson* and *Lucas* fails to render the pending claims *prima facie* obvious.

In observing independent claims 6, 25 and 40, the claims are directed to a splint comprising a primary tacking arrangement for holding an orthopedic blank in place on an injured part of a patient's anatomy in a manner that allows adjustment of the blank with respect to the anatomy. Claims 6, 25 and 40 further require that the primary tacking arrangement is of insufficient strength to rigidly immobilize the splint for long-term use.

As was noted during the interview, the primary tacking arrangement is a temporary strap that holds the orthopedic blank so as to enable single-person application of a secondary more supportive securing means. The primary tacking arrangement is extremely lightweight and low profile. Also, when stretched, the primary tacking arrangement gradually tears over relatively small loads before completely separating.

Indeed, the primary tacking arrangement possesses a unique combination of strength, stretch and tear properties that provide considerable advantages in the application of splints. For instance, during application of a splint to an injured portion of a person's anatomy, even the slightest pressure can cause intense pain. It is also critical that good circulation is maintained to the injured body part.

The unique set of strength, stretch and tear properties of the primary tacking arrangement allow it to be strong enough to hold the orthopedic blank so as to allow single-person application of a secondary securing means, yet delicate enough such that the primary tacking arrangement does not create pressure points or restrict circulation.

Essentially, the primary tacking arrangement is easily stretchable and designed to tear gradually over relatively small loads before completely separating, thus preventing the primary tacking arrangement from creating pressure points or restricting circulation to the patient. Because the primary tacking arrangement is easily stretchable and designed to tear gradually over relatively small loads before

completely separating, the primary tacking arrangement is of insufficient strength to rigidly immobilize the splint for long-term use.

Turning to the art rejection of independent claims 6, 25 and 40, the proposed combination of *Darcey*, *Parker*, *Ferguson* and *Lucas* does not disclose a primary tacking arrangement comprising a strip of non-woven material of insufficient strength to rigidly immobilize a splint for long-term use, as required by claims 6, 25 and 40.

*Darcey* discloses straps 26 for securing splints 14 to the hand and wrist of a patient (col. 7, lines 5-10; Fig. 8-10). The straps 26 are formed of a woven or knitted material 27 having a loose, fibrous covering 28 on its surface (col. 7, lines 7-10). The straps 26 have a D-ring 30 at one end and a patch of hook material 32 at the other end so that the straps 26 can be sufficiently tightened to securely fix the splints 14 on the patient's hand and wrist (col. 7, lines 9-11 and 27-29).

The splints 14 and straps 26 are overwrapped with an elastic bandage 34 at least until the splints are completely hardened into proper conformation on the patient's hand and wrist (col. 7, lines 30-35). Once the splints are hardened, the elastic bandage can be removed and the splints can be worn with only the straps 26 securing the splints to the patient. Since the splints can be secured by the straps 26 alone, the straps 26 are clearly strong enough to rigidly immobilize the splints 14 for long-term use.

The rejection acknowledges that *Darcey* does not teach a primary tacking arrangement of insufficient strength to rigidly immobilize a splint for long-term use and instead relies on *Parker* for this teaching.

*Parker* discloses a heavy elastic strap 124 for securing a shin guard 120 on the leg of a user (col. 10, line 65 to col. 11, line 5). The rejection asserts that in view of the teaching of the elastic stretchable strap 124 in *Parker*, it would have been an obvious design choice to modify the straps of *Darcey* to be of insufficient strength to rigidly immobilize a splint for long-term use. Applicant respectfully disagrees with this assertion.

*Parker*, like *Darcey*, discloses a strap 124 that is the sole securing means for securing a device on a wearer. *Parker* further explicitly states that the strap 124 is a heavy elastic strap (col. 11, lines 2-4).

Since both *Darcey* and *Parker* disclose straps that are sole securing means designed to be durable and strong enough to alone securely hold their respective devices on the wearers, the skilled artisan would in no way be inclined to modify the straps 26 of *Darcey* to be weaker than their current form. Indeed, in view of the teachings of *Darcey* and *Parker*, there is simply no suggestion, motivation or other rationale for modifying the straps of *Darcey* such that they are of insufficient strength to rigidly immobilize a splint for long-term use.

As such, the proposed combination of *Darcey*, *Parker*, *Ferguson* and *Lucas* does not disclose a primary tacking arrangement comprising a strip of non-woven material of insufficient strength to rigidly immobilize a splint for long-term use, as recited in claims 6, 25 and 40.

Further, it is submitted that modifying the straps 26 of *Darcey* to have the non-woven material of the bandage in *Lucas* would render the straps 26 of *Darcey* unsatisfactory for their intended purpose.

As mentioned above, the straps 26 in *Darcey* are disclosed as being capable of securing the splints 14 without the aid of the bandage 34. *Darcey* also explicitly discloses that the straps 26 are made of a woven or knitted material (col. 7, lines 7-9).

As *Darcey* does not disclose that the straps are made of a non-woven material, the rejection modifies *Darcey* to have the non-woven carrier strip 102 of the bandage in *Lucas*. However, since *Darcey* explicitly discloses that the straps 26 are made of a woven or knitted material, which are both known to be stronger and more durable than non-woven materials, modifying the *Darcey* straps to have the non-woven material of the bandage in *Lucas* would render the straps 26 of *Darcey* unsatisfactory for their intended purpose of securely holding the splints on the patient's hand and wrist without the aid of the bandage 34.

As such, the skilled artisan would not understand to modify *Darcey* to have the non-woven material of *Lucas*.

In view of these observations, it is respectfully submitted that the proposed combination of *Darcey*, *Parker*, *Ferguson* and *Lucas* fails to render the pending claims of this rejection *prima facie* obvious. Accordingly, withdrawal of this rejection is kindly requested.

4. Rejection of claims 10, 11, 28, 43 and 45 under 35 U.S.C. § 103(a) as being unpatentable over U.S. patent 6,106,492 (*Darcey*) in view of U.S. patent 5,755,678 (*Parker*), U.S. patent 6,042,557 (*Ferguson*), U.S. patent 6,362,388 (*Lucas*), and further in view of U.S. patent 6,139,513 (*Grim*)

Reconsideration of this rejection is respectfully requested in light of the observations noted above and the amendment to independent claims 6, 25 and 40.

It is submitted that *Grim* does not make up for the shortcomings of *Darcey*, *Parker* and *Ferguson* and thus claims 10, 11, 28, 43 and 45 are patentable at least in view of their dependency from independent claims 6, 25 and 40.

Accordingly, withdrawal of this rejection is respectfully requested.

5. Rejection of claims 23 and 24 under 35 U.S.C. § 103(a) as being unpatentable over U.S. patent 6,106,492 (*Darcey*) in view of U.S. patent 5,755,678 (*Parker*) U.S. patent 6,042,557 (*Ferguson*), U.S. patent 6,362,388 (*Lucas*), and further in view of U.S. patent 5,195,944 (*Schlogel*)

Reconsideration of this rejection is respectfully requested in light of the observations noted above and the amendment to independent claims 6, 25 and 40.

It is submitted that *Schlogel* does not make up for the shortcomings of *Darcey*, *Parker* and *Ferguson* and thus claims 23 and 24 are patentable at least in view of their dependency from independent claims 6, 25 and 40.

Accordingly, withdrawal of this rejection is respectfully requested.

6. Conclusion

As a result of the foregoing remarks, it is respectfully submitted that the application is in condition for allowance. Accordingly, it is respectfully requested that every pending claim in the present application be allowed and the application be passed to issue.

If any issues remain that may be resolved by a telephone or facsimile communication with the applicants' attorney, the examiner is invited to contact the undersigned at the numbers shown below.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Justin J. Cassell", written in a cursive style.

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